

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-10348
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APRIL 19, 2005
THOMAS K. KAHN
CLERK

D.C. Docket No. 01-00993-CR-AJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LOURDES GARCIA-RODRIGUEZ,
NANCY TOROQUET-CERVANTES,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Florida

(April 19, 2005)

**ON REMAND FROM THE
SUPREME COURT OF THE UNITED STATES**

Before BIRCH, DUBINA and BLACK, Circuit Judges.

PER CURIAM:

This case is before the Court for consideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). We previously affirmed Garcia-Rodriguez' and Toroguet-Cervantes' convictions and sentences. *See United States v. Garcia-Rodriguez*, Case No. 03-10348 (11th Cir. Feb. 24, 2004) (unpublished). The Supreme Court vacated our prior decision and remanded the case to us for further consideration in light of *Booker*.

On appeal, neither Garcia-Rodriguez or Toroguet-Cervantes asserted error based on *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000), or any other case extending or applying the *Apprendi* principle.

In *United States v. Dockery*, 11th Cir., 2005, ___ F.3d ___ (No. 03-16388, March 3, 2005), after the Supreme Court's remand with instructions to reconsider our opinion in light of *Booker*, we relied on our earlier case of *United States v. Ardley*, 242 F.3d 989 (11th Cir.), *cert. denied*, 121 S. Ct. 2621 (2001), which observed:

Nothing in the *Apprendi* opinion requires or suggests that we are obligated to consider an issue not raised in any of the briefs that appellant has filed with us. Nor is there anything in the Supreme Court's remand order, which is cast in the usual language, requiring that we treat the case as though the *Apprendi* issue had been timely raised in this Court. In the absence of any requirement to the contrary in either *Apprendi* or in the order remanding this case to us, we apply

our well-established rule that issues and contentions not timely raised in the briefs are deemed abandoned.

Ardley, 242 F.3d at 990 (citations omitted). Thus, because Dockery had not asserted an *Apprendi* (or its progeny) challenge to his sentence, we reinstated our previous opinion. *Dockery*, 11th Cir., 2005, ___ F.3d ___ (No. 03-16388, March 3, 2005).

Because neither Garcia-Rodriguez or Toroguet-Cervantes asserted error based on *Apprendi* (or its progeny) in their appeals, we reinstate our previous opinion this case and affirm, once again, Garcia-Rodriguez' and Toroguet-Cervantes' convictions and sentences after our reconsideration in light of *Booker*, pursuant to the Supreme Court's mandate.

OPINION REINSTATED IN PART; AFFIRMED.